

10/11 Doc. 97-217

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Edwin N. Lavergne
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June 19, 2000

BY HAND

Magalie Salas Roman, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-A325
Washington, D.C. 20554

RECEIVED
JUN 19 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Request for Delay in MDS/ITFS Filing Window**

Dear Ms. Salas:

Please accept an original, four copies, and a stamp return copy of the attached Joint Comments in support of the Petition of the Association of Federal Communications Consulting Engineers requesting an extension of the initial filing window for two-way MDS/ITFS service, which was filed on June 7, 2000.

Please contact Edgar Class at (202) 639-5639 with any questions concerning these Joint Comments. Thank you for your attention to this matter.

Respectfully submitted,



Edwin N. Lavergne

cc: Roy Stewart (By Hand)
Barbara Kreisman (By Hand)
Charles Dziedzic (By Hand)
David Roberts (By Hand)

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List A B C D E

BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C. 20554

RECEIVED
 JUN 19 2000
 FEDERAL COMMUNICATIONS COMMISSION
 OFFICE OF THE SECRETARY

In the Matter of)
)
 Petition of the Association of Federal)
 Communications Commission Consulting)
 Engineers Requesting Revision of Initial Filing)
 Window for Two-Way Multipoint Distribution)
 and Instructional Television Fixed Service)

To the Chief, Mass Media Bureau:

JOINT COMMENTS

These comments are jointly submitted by the undersigned 14 accredited schools and non-profit entities ("Educators") that hold Instructional Television Fixed Service ("ITFS") licenses in over 20 markets throughout the United States. The Educators strongly support the above-captioned petition filed on June 7, 2000 by the Association of Federal Communications Commission Consulting Engineers ("AFCCE") requesting a 130-day postponement of the July 3-10, 2000 filing window for Multipoint Distribution Service ("MDS") and ITFS applications.¹

The Educators are exploring various options to take advantage of the Commission's new two-way rules to expand educational and instructional services within their respective service areas. Some of the Educators are in active negotiations with commercial operators regarding excess capacity lease agreements. Others are giving serious consideration to the possibility of filing of two-way system applications on their own or with other licensees in their markets.

1. Association of Federal Communications Consulting Engineers, *Petition Requesting Revision of Initial Filing Window for Two-Way Multipoint Distribution and Instructional Television Fixed Service* (petition date June 6, 2000) ("AFCEE Petition").

The AFCCE petition raises serious concerns regarding the operation and functionality of the software necessary to develop and evaluate the complex interference studies mandated by the Commission's new two-way rules.² Among the problems identified by AFCCE are: (i) the amount of training necessary to make effective use of the software; (ii) uncertainty regarding the accuracy of the results produced by the software; (iii) the inability of either of the two commercially available software packages to read data files produced by the other; and (iv) the amount of time required by the software to run the interference calculations.³ In addition, AFCCE expresses concern over the lack of a complete, accurate database of current ITFS and MDS facilities.⁴ For these reasons, AFCCE believes that a postponement of the initial filing window is necessary.

The Educators support postponement of the initial filing window for two reasons, both of which relate to the problems described by AFCCE. First, the Educators presently are unable to evaluate their options in advance of the current filing window. As the accompanying Engineering Statement clearly demonstrates, ITFS licensees are unable at present to obtain the assistance of consulting engineers in the development of engineering analyses because the tools necessary to conduct such analyses are not yet ready for the task. Thus, a delay in the initial filing window is necessary to avoid compromising an important goal of the two-way proceeding — to empower ITFS licensees to apply for two-way services on their own.

2. *See Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order on Reconsideration, 14 FCC Rcd 12764, Appendix D (1999).

3. *AFCEE Petition* at 3-5.

4. *Id.* at 4.

The Commission has made clear from the start that the ability to take advantage of two-way services was not the exclusive province of MDS licensees and commercial operators, but rather that ITFS licensees must have the ability to deploy two-way systems *of their own* in order to maximize the educational benefits of their spectrum.⁵ If the initial filing window opens as scheduled, few, if any, ITFS licensees, operating independently, can hope to file their own two-way applications. Certainly, there will be additional opportunities to apply for two-way facilities after the applications filed in the initial window are settled and granted. However, the Educators are concerned that applications filed in the initial window could preclude them from designing systems that can operate without interfering with previously applied-for facilities, due to the extremely strong protection granted to response station hubs. If even one ITFS licensee is precluded from making its own filing for want of the necessary engineering tools, the Commission's promise of independent two-way services for ITFS licensees would be an empty one.

Second, the Educators support a postponement of the filing window because they do not currently have the ability to evaluate either (i) a statement of consent to harmful interference that may be requested by a potential applicant in lieu of an interference analysis to be submitted with its application, or (ii) an application filed with an engineering study purporting to demonstrate protection to their respective facilities. The ability to properly evaluate engineering studies is crucial to the successful deployment of two-way services. The Commission will no longer perform its traditional review of ITFS filings, and will turn that function over to ITFS licensees, who must

5. See, e.g., *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Notice of Proposed Rulemaking, 12 FCC Rcd 22174, 22180 (1997) (rejecting proposal that would prevent ITFS licensees from using their own channels for two-way services); Report and Order, 13 FCC Rcd 19112, 19173-74 ¶ 115 (1998) ("*Report and Order*") (reaffirming the ability of stand alone ITFS licensees to provide two-way services).

monitor any filings with “increased diligence.”⁶ In recognition of the important role that the ITFS licensee review plays in the two-way regime, the Commission has stated its belief that “it is wise for ITFS licensees to seek impartial review of applications and consents.”⁷ Yet, as demonstrated in the accompanying Engineering Statement, the consulting engineers upon whom many ITFS licensees rely are not presently in a position to perform the necessary review functions to assure an orderly deployment of two-way services. Surely the Commission would agree that it is unfair to place the burden of review upon licensees and at the same time fail to give licensees the opportunity to acquire the tools with which to conduct their review.

Wherefore, for the foregoing reasons, the Educators support the petition of AFCCE, and request that the Commission postpone the initial filing window for a reasonable period as requested therein.

Respectfully submitted,

ARCHDIOCESE OF LOS ANGELES EDUCATION AND
WELFARE CORPORATION

CARITAS TELECOMMUNICATIONS CORP.

CATHOLIC BISHOP OF CHICAGO

COUNTERPOINT COMMUNICATIONS, INC.

NATIONAL CONFERENCE ON CITIZENSHIP

OAKLAND SCHOOLS

OKLAHOMA EDUCATIONAL TELEVISION
AUTHORITY

6. *Report and Order*, 13 FCC Rcd at 19147 ¶ 63.

7. *Id.* at 19181 ¶ 129.

ROMAN CATHOLIC ARCHBISHOP OF THE
ARCHDIOCESE OF DETROIT

ROMAN CATHOLIC COMMUNICATIONS
CORPORATION - SAN FRANCISCO BAY AREA

ROMAN CATHOLIC DIOCESE OF ORANGE

THE REGENTS OF THE UNIVERSITY OF COLORADO

By: _____

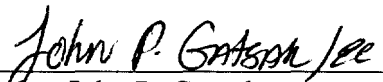


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Their attorneys

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ARCHDIOCESE OF HARTFORD

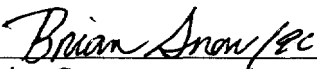
By: _____



Father John P. Gatzak
Director

STATE BOARD OF AGRICULTURE BY AND ON
BEHALF OF COLORADO STATE UNIVERSITY

By: _____



Brian Snow
General Counsel

OKLAHOMA STATE REGENTS FOR HIGHER
EDUCATION

By: William Johnson /cc.
William Johnson
Network Operations Manager

June 19, 2000

Educators

**Joint Engineering Statement
in Support of AFCCE Petition for
a 130-Day Delay of the
Wireless Cable Cellularized,
Two-Way Filing Window**

MM Docket 97-217

June 14, 2000

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Educators

Joint Engineering Statement of

John F.X. Browne, P.E., Robert W. Denny, Jr., P.E., and Dane E. Ericksen, P.E.

The firms of John F.X. Browne and Associates, P.C., Denny & Associates, P.C., and Hammett & Edison, Inc., have prepared this engineering statement in support of the Association of Federal Communications Consulting Engineers for a *Petition Requesting Revision of Initial Filing Window for Two-Way Multipoint Distribution and Instructional Television Fixed Service*.

A Delay of the Filing Window is Necessary to Allow ITFS Licensees and Their Consulting Engineers Additional Time to Implement the Appendix D Methodologies

1. We jointly concur with the June 6, 2000, petition filed by the Association of Federal Communications Consulting Engineers ("AFCCE") for a 130-day delay of the July 3–10, 2000, filing window for digital, two-way, "cellularized," ITFS and MMDS stations. We agree that the necessary software to allow ITFS licensees, or their consulting engineers, to independently check applications for compliance with the new and highly complex Docket 97-217 Appendix D methodologies is not yet readily available. The ability of ITFS licensees (and MMDS licensees) to independently check both proposals and applications is fundamental to the Commission's radically changed regulatory approach, wherein the Commission will rely on applicant-to-applicant and applicant-to-licensee negotiations and, if necessary, petitions to deny, to ensure the integrity of the ITFS and MMDS spectrum, as opposed to its own independent review of applications filed during the window.

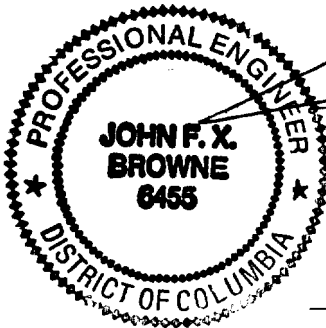
2. Each of us has been asked by clients to prepare or evaluate applications for two-way authorizations. Such applications require extensive engineering analysis to demonstrate that the proposed two-way use will not cause interference to any existing or prior proposed operations in each market area. Presently, we do not believe there will be enough time before the July 3–10, 2000, filing window to evaluate or to prepare such applications.

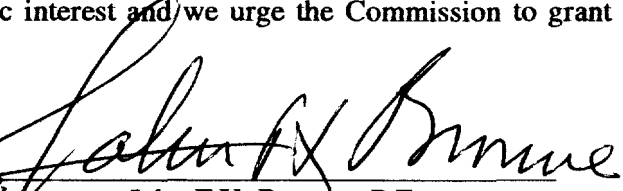


Educators

Summary

3. The undersigned Registered Professional Engineers, all with many years of experience in preparing ITFS applications, and who have closely participated in the MM Docket 97-217 rule making and subsequent *ex parte* filings, agree with and support the AFCCE petition for a 130-day delay of the two-way filing window. Such delay will allow ITFS licensees and their consulting engineers who can properly evaluate the many two-way, cellularized, digital wireless cable proposals being submitted to them by MMDS licensees and BTA holders. Such slippage of the filing window would therefore be in the public interest and we urge the Commission to grant the AFCCE petition.




John F.X. Browne, P.E.
John F.X. Browne and Associates, P.C.
Consulting Engineers

Robert W. Denny, Jr., P.E.
Denny & Associates, P.C.
Consulting Engineers

Dane E. Ericksen, P.E.
Hammett & Edison, Inc.
Consulting Engineers

June 14, 2000

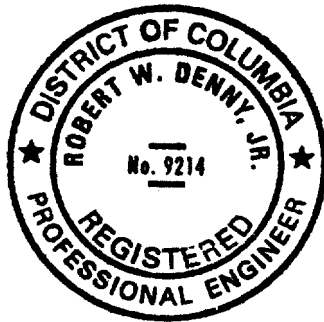


HAMMETT & EDISON, INC.
CONSULTING ENGINEERS
SAN FRANCISCO

Educators

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John F.X. Browne, P.E.
John F.X. Browne and Associates, P.C.
Consulting Engineers

A handwritten signature in black ink, appearing to read "Robert W. Denny, Jr.", written over a horizontal line.

Robert W. Denny, Jr., P.E.
Denny & Associates, P.C.
Consulting Engineers

Dane E. Ericksen, P.E.
Hammett & Edison, Inc.
Consulting Engineers

June 14, 2000

Educators

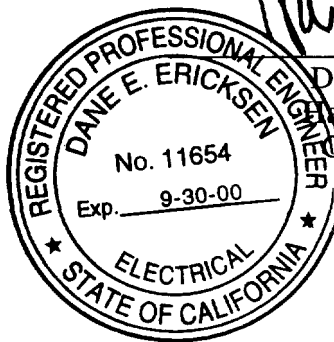
Summary

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June 14, 2000



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CONSULTING ENGINEERS
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